

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court		District Northern District of Ohio Cleveland	
Name (under which you were convicted): <u>Jermaine D. Bailey</u>		Docket or Case No.: <u>5: 14 CR 20-001</u>	
Place of Confinement: Mansfield Correctional Institution <u>1150 North Main Street P.O. #788</u> <u>Mansfield Ohio 44901-0788</u>		Prisoner No.: <u>#38323-060</u>	
UNITED STATES OF AMERICA Northern District of Ohio Cleveland V. <u>Jermaine D. Bailey</u> Eastern Division		Movant (include name under which convicted)	

MOTION

1. (a) Name and location of court which entered the judgment of conviction you are challenging:
United States District Court for the Northern District of Ohio - Cleveland.
801 West Superior Avenue
Cleveland, Ohio 44113-1830

(b) Criminal docket or case number (if you know): #5: 14 CR 20-001

2. (a) Date of the judgment of conviction (if you know): January 26, 20015

(b) Date of sentencing: January 26, 2015

3. Length of sentence: (32) Thirty Two Months to run Consecutive to State sentence.

4. Nature of crime (all counts): Title & Section Nature of Offense
18 U.S.C. §§ 841 (a)(1) and 841(b)(1)(C) and 18U.S.C. §§2

FILED
 2015 NOV 20 PM 12:33
 CLERK U.S. DISTRICT COURT
 NORTHERN DISTRICT OF OHIO
 CLEVELAND

5. (a) What was your plea? (Check one)
- (1) Not guilty ☐
 (2) Guilty ☒
 (3) Nolo contendere (no contest) ☐

(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or what did you plead guilty to and what did you plead not guilty to?

Plead guilty to Count Two of the Indictment and Count One was Dismissed.

6. If you went to trial, what kind of trial did you have? (Check one) Jury ☐ Judge only ☐
7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes ☐ No ☒
8. Did you appeal from the judgment of conviction? Yes ☒ No ☐

9. If you did appeal, answer the following:

- (a) Name of court: United States District Court for the Northern District of Ohio Cleve.
- (b) Docket or case number (if you know): #5 :14 CR 20-001
- (c) Result: Pending
- (d) Date of result (if you know): N/A
- (e) Citation to the case (if you know): Motion Under 28 U.S.C. §§ 2255
- (f) Grounds raised: Ineffective Assistance of Counsel and Correction of Sentence

(g) Did you file a petition for certiorari in the United States Supreme Court?

Yes

☐

No

☒

If "Yes," answer the following:

- (1) Docket or case number (if you know): _____
- (2) Result: _____
- (3) Date of result (if you know): _____
- (4) Citation to the case (if you know): _____
- (5) Grounds raised: _____

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications, concerning this judgment of conviction in any court?

Yes

☐

No

☒

11. If your answer to Question 10 was "Yes," give the following information:

- (a) (1) Name of court: _____
- (2) Docket or case number (if you know): _____
- (3) Date of filing (if you know): _____
- (4) Nature of the proceeding: _____
- (5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐

No ☒

(7) Result: _____

(8) Date of result (if you know): _____

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: _____

(2) Docket of case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐

No ☒

(7) Result: _____

(8) Date of result (if you know): _____

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition:

Yes ☐

No ☒

(2) Second petition:

Yes ☐

No ☒

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

N/A

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: Ineffective Assistance of Counsel

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Petitioner Jermaine D. Bailey, state that his counsel of the above caption case Attorney James M. Kersey Attorney and Counsellor at Law Standard Building Suite 1350 1370 Ontario Street Cleveland Ohio 44113

The Trial Counsel deprived the Petitioner Bailey to review the P.S.I. report in timely matter, which was three days before sentence, and could not review and object to the issues raised. **WHEREFORE**, move for Errors to be corrected.

(b) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☒No ☐

(2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed:

N/A

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

N/A

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

N/A

GROUND TWO: Motion to Correct Sentence Due to Error in Plead Agreement.

Statement of Facts

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Petitioner Jermaine D. Bailey, states that he was pleading to a "Simply Possession" under 21 U.S.C. §§841 (b) (1)(C), and after reviewing the plead agreement the Petitioner realized a error in the Plead Agreement. Which Government enter the statue which should have been dismissed alone with count (1) one of the indictment. 21 U.S.C. §§ 841 (A)(1) Possesion of a Controlled Substance with the Entent to Distribute

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☒

No ☐

(2) If you did not raise this issue in your direct appeal, explain why:

N/A

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐

No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if avail:

(3) Did you receive a hearing on your motion, petition, or c

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion, petition.

Yes ☐ No ☒

(5) If your answer to Question (c)(4) is "Yes," did you rais:

Yes ☐ No ☒

appeal?

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if avail:

(7) If your answer to Question (c)(4) or Question (c)(5) is "

issue:

/ you did not appeal or raise this

N/A

GROUND THREE:

(a) Supporting facts (Do not argue or cite law. Just state the spe

pport your claim.):

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☒ No ☐

(2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: 28 U.S.C. §§ 2255

Name and location of the court where the motion or petition was filed:

United States District Court for the Northern District of Ohio Cleveland.

Docket or case number (if you know): # 5: 14 CR 20-001

Date of the court's decision: January 26, 2015

Result (attach a copy of the court's opinion or order, if available):

Pending

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

N/A

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

GROUND FOUR:

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐

No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐

No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

N/A

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

N/A

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

15. Give the name and address, if known, of each attorney who represented you in the following stages of the you are challenging:

(a) At the preliminary hearing:

James M. Kersey, Attorney -at- Law 1370 Ontario Street Cleveland Ohio, 44113 suite #1350

(b) At the arraignment and plea:

James M. Kersey Attorney -at- Law

(c) At the trial:

N/A

(d) At sentencing:

James M. Kersey Attorney-at-Law

(e) On appeal:

N/A

(f) In any post-conviction proceeding:

N/A

(g) On appeal from any ruling against you in a post-conviction proceeding:

16. Were you sentenced on more than one court of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

N/A

(b) Give the date the other sentence was imposed:

(c) Give the length of the other sentence:

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☒ No ☐

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.*

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of –

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, movant asks that the Court grant the following relief:

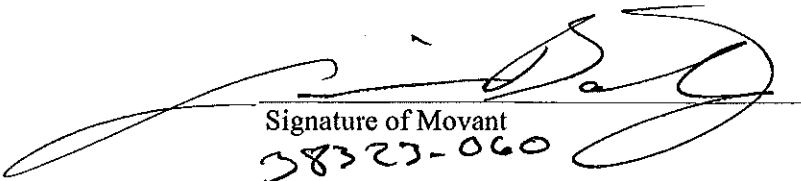
Correction of Sentence and the Offense Level and Vacate 21 U.S.C. §§841 (A)(1)

or any other relief to which movant may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on OCTOBER 15, 2015
(month, date, year)

Executed (signed) on Oct 15, 2015 (date)


Signature of Movant

38323-060

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.

MEMORANDUM FACTS IN SUPPORT

This matter comes before this Honorable Court for review on a cause for action for A Writ Habeas Corpus under pursuant 28U.S.C. § 2255 Rules Governing Section 2255 Cases in the United States District Courts. By the Petitioner Jermaine Bailly, Appellant Pro-se.

Petitioner Bailey contends his Constitutional Rights was violated and his Due Process Rights, in the United States District Courts are set out ante, following the Rules of Procedure of the Judicial panel on Pro-Se Litigation. Federal Custody; remedies on motion attacking ineffective assistance of counsel and attacking sentence a prisoner in custody under sentence of a court established by Act of Congress claiming the rights to be released upon the ground that the sentence was imposed in violation of the Constitution or Laws of the United States. The facts will show why petitioner attorney had shown Ineffective assistance of Counsel for the Petitioner argues that his counsel violated his Due Process of Law, by not going over his "Plea Agreement" correctly/or review his P.S.R. in a timely matter for the petitioner could review and object to in a carefully review. after the sentence was handed down the petitioner noticed a error in his change of plea and should be corrected as to the facts of law, and the changes under statue 21 U.S.C. § 841 (A)(1) and 841 (b)(1)(C) and 18 U.S.C. § 2 . Wherefore the Petitioner ask this Honorable Court to review the caption at bar and the sentence?.

ARGUMENT OF FACTS

PETITIONER, argue under F.R.C.P. under 21 U.S.C. § 841(A)(1) and 841 (B)(1) (C) and 18 U.S.C. § 2 is what the petition agreeded upon entering a plea agreement, and was under the impression upon sentencing. Was to Plea to a single count of possession, not to 21 U.S.C. § 841 (A) (1) possession of a controlled substance with the entent to distribute for the petitioner had to conspired with a person of agreement. The court agreeded to dismiss upon sentencing 21 U.S.C. § 846. Also the Petitioner asserts in his statement I had nothing to with the controband in the above case, and therefore petitioner should not be charged with 841 (A)(1) possession of a controlled substance with the entent to distribute, and asserts that the court errored at sentence and should be corrected. With the correct statue of 21 U.S.C. § 841 (b)(1) a single count of possession with the 18 U.S.C. § 2 which would change the petitioner offense level at the original level of 18 not 20 for the 841 (a) (1) enhances the offense level to 20 and which 841 (b)(1) and asserts that he should be at the original level 18. Therefore the 841 (A)(1) and 841(b)(1) (c) should be changed, because the petitioner was is not charged with 21 U.S.C § 846 and moves this court to properly correct this sentence where relief can be GRANTED.

RESPECTFULLY SUBMITTED

JERMAINE BAILLY PRO-SE #663-683

38323-060